



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2013

Mr. Norman Ray Giles
Counsel for City of Pasadena
Chamberlain, Hrdlicka, White, Williams & Aughtry
1200 Smith Street, Suite 1400
Houston, Texas 77002

OR2013-00452

Dear Mr. Giles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 476762.

The City of Pasadena (the "city"), which you represent, received a request for copies of suspension letters involving four named city police officers. You state the city has no responsive information regarding two of the named officers.¹ You claim the submitted information regarding the other two officers is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We first note the requestor specifically seeks access to "suspension letters" involving the two named officers. Thus, the rest of the submitted information, which we have marked, is not responsive to the present request for information. Therefore, this decision does not address the public availability of the marked information.

Section 552.103 of the Government Code, the "litigation exception," provides in part:

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that seeks to withhold information under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information at issue. To meet this burden, the governmental body must demonstrate (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You indicate the submitted responsive information is related to a pending lawsuit to which the officers who are the subject of the information are parties in their capacities as city police officers. You have provided documentation demonstrating the lawsuit, *Jose Maria Moya, et al. v. City of Pasadena, Tex., et al.*, No. 2012-64082, was pending in district court in Harris County when the city received the request for the responsive information. Based on your representations and documentation and our review, we find the responsive information is related to pending litigation to which the named officers were parties as a consequence of their employment on the date of the city's receipt of the request for the information. *See Gov't Code § 552.103(a), (c).* We therefore conclude the city may withhold the responsive information under section 552.103 of the Government Code.

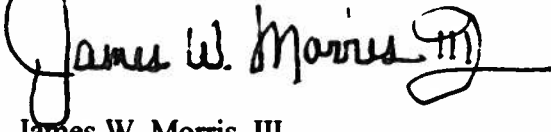
In reaching this conclusion, we assume the opposing parties in the pending litigation have not seen or had access to any of the responsive information. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information related to litigation through discovery procedures. *See ORD 551 at 4-5.* If the opposing party has seen or had access to information related to pending litigation through discovery or otherwise, there is no interest in withholding such information from public disclosure under section 552.103. *See Open Records Decision Nos. 349 (1982), 320 (1982).* We note the applicability of section 552.103 ends once the related litigation

concludes. See Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 476762

Enc: Submitted documents

c: Requestor
(w/o enclosures)